

2005 DRAFTING REQUEST

Bill

Received: 01/10/2005

Received By: **jkreye**

Wanted: **As time permits**

Identical to LRB:

For: **Administration-Budget**

By/Representing: **Koskinen**

This file may be shown to any legislator: **NO**

Drafter: **jkreye**

May Contact:

Addl. Drafters:

Subject: **Tax, Other - alcohol and tobacco**

Extra Copies:

Submit via email: **YES**

Requester's email:

Carbon copy (CC:) to: **joseph.kreye@legis.state.wi.us**

Pre Topic:

DOA:.....Koskinen, BB0401 -

Topic:

Direct marketing of cigarettes and tobacco products

Instructions:

See Attached

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/6	jkreye 01/28/2005	kfollett 01/28/2005	rschluet 01/27/2005 _____		sbasford 01/27/2005		S&L
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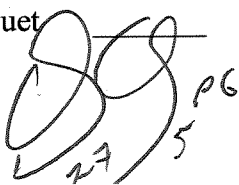
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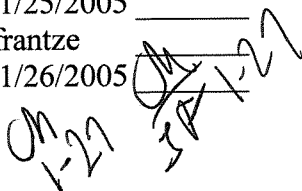
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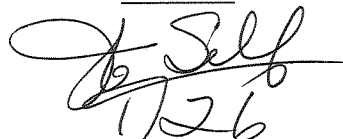
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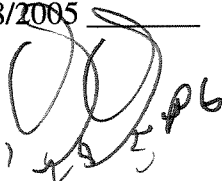
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2005-07 Budget Bill Statutory Language Drafting Request

- **Topic: Direct Marketing of Cigarettes and Tobacco Products**
- Tracking Code:
- SBO team: Tax and Justice
- SBO analyst: John Koskinen
 - Phone: 266-2081
 - Email: john.koskinen@doa.state.wi.us
- **Agency acronym: DOR**
- **Agency number: 566**

1. **Require direct marketers to obtain a permit from the Department of Revenue to sell cigarettes and tobacco products in Wisconsin without obtaining a municipal retailer's license.**

See attached issue paper and drafting instructions from DOR.

**Legislative Proposal Summary
Wisconsin Department of Revenue
IS&E-Audit-Excise**

September 9, 2004

TITLE: Direct Marketing of Cigarettes and Tobacco Products

DESCRIPTION OF CURRENT LAW AND PROBLEM

Under current law, a person may not sell cigarettes in this state as a distributor, jobber, vending machine operator, or multiple retailer without having a permit from the Department of Revenue (DOR). Also, a person may not sell tobacco products in this state as a distributor or jobber without having a permit from DOR.

Under current law, a person may not sell cigarettes or tobacco products to consumers in this state unless the person obtains a license from each city, village, or town in which the person intends to sell cigarettes or tobacco products.

The current trend in the cigarette and tobacco products market is to sell the cigarettes and tobacco products by direct marketing, i.e. through the internet, by mail, or by telephone to name a few. As the cost and tax rates increase on cigarette and tobacco products, more state revenue is being lost to illegal sales of these products by direct marketing as the sellers and consumers of these products avoid paying state taxes. Also being reduced is the escrow payments due under the Tobacco Master Settlement Agreement (MSA) with states for future health care costs. Although Wisconsin has sold its MSA payments to bond holders, it is critical that the MSA be diligently enforced for cigarettes sold via direct marketing.

Under current law, direct marketing violates laws regulating the sale of cigarettes to Wisconsin consumers. Currently all brands of cigarettes, roll your own tobacco, and little cigars have to be certified by the Attorney General and approved prior to sale in Wisconsin. Direct Marketers are selling cigarettes, roll your own tobacco, and little cigars that do not have prior certification or prior approval into Wisconsin.

Underage sales of cigarettes and tobacco products are going unchecked with the ease of purchasing these products via direct marketing.

RECOMMENDATION FOR ACTION

The proposed legislation would provide that direct marketers would have to obtain a permit from the Department of Revenue (DOR) to sell cigarettes and tobacco products in Wisconsin without obtaining a municipal retailer's license.

Under this proposed legislation, no person could sell cigarettes or tobacco products to consumers in this state as a direct marketer or solicit sales of cigarettes or tobacco products to consumers in this state by direct marketing unless the person has obtained a permit from DOR to make such sales or solicitations. The person would have to file an application for a cigarette permit with DOR, in the manner prescribed by the Department, and submit the following fee with the application: (a) if the person sells no more than 30,000 cigarettes annually to consumers in this state by direct marketing, \$500 or (b) if the person sells more than 30,000 cigarettes annually, \$1,000. The person would have to file an application for a tobacco products permit with DOR, in the manner prescribed by the

Department, and submit a \$500 fee with the application. A permit issued under this provision would expire on December 31 of each year.

DOR could not issue a permit to a person unless the person certifies to the Department that the person will acquire unstamped cigarettes from the manufacturer or from the first importer of record, pay the state cigarette tax, affix tax stamps to the cigarette packages or containers, store such packages or containers, and sell only such packages or containers to consumers in this state by direct marketing; or purchase cigarettes from a Wisconsin licensed distributor, in packages or containers on which stamps have been affixed, store such packages or containers, and sell only such packages or containers to consumers in this state by direct marketing.

No person could be issued a direct marketing permit unless the person holds a valid business tax registration permit. The provisions requiring denial of a cigarette direct marketing permit to persons who have been convicted of certain crimes would also apply to tobacco products direct marketing permits.

Under this proposed legislation, no person could sell cigarettes and tobacco products to consumers in this state by direct marketing unless the person first obtains a notarized copy of the purchaser's driver's license or official Wisconsin identification card, verifying that the purchaser is at least 18 years of age or has a DOR approved mechanism for verifying the age of a consumer. The direct marketer would be required to keep all certified copies of the driver's license or identification card on file and available for inspection by authorized employees of the department for five years from the date of the last sale to an individual. In addition, the government-issued form of identification would be required to be checked against a government-issued database for verification of authenticity and accuracy.

ADMINISTRATIVE IMPACT

By passing this proposed legislation, additional permit types would have to be added to Integrated Tax System to accept and issue a direct marketing permit. New forms will need to be created for the filing of the monthly reports. Additional job duties would be added for the auditing and enforcement of these permit types.

FAIRNESS /TAX EQUITY

The enactment of the proposed legislation would require all cigarettes and tobacco products sold via direct marketing to include the cigarette and tobacco products taxes as well as the sales tax. With the paying of these taxes, all direct marketers will be selling the cigarettes and tobacco products at the same price level as in state retailers. All cigarette and tobacco products taxes and sales and use taxes will have been paid to the state on the sales of these products.

Also with the enactment of the proposed legislation, direct marketers would fall under the same rules, regulations and enforcement provisions as distributors, jobbers, vending machine operators, and retailers.

IMPACT ON ECONOMIC DEVELOPMENT

The in state retailers could possibly see a revitalization of their sales of cigarette and tobacco products that they have been losing to direct marketers. Also the direct marketers would be paying additional revenues to the state in cigarette, tobacco products, and sales taxes.

FISCAL EFFECT

On the tax revenue side, we have an estimate that was prepared in 2001-02 session based on the proposal submitted by Rep. Duff (Duff's estimate). This estimate was based on the 1999 California study. In order for us to do a new estimate we would need to get a better understanding of the more recent trends underlying the sale of cigarettes via Internet and to verify and update the California study, or look for other data sources.

For the purpose of this round of estimation I used the methodology we used to develop the Duff's estimate based on the assumptions of the California study, and updated the information on the new fee schedule including the most recent forecast of cigarette sales. The results are shown in table below and they are consistent with the estimate developed in 2002 - 02. They show total fees collected of \$156,500 for FY04, increasing to \$161,500 in FY07. Excise tax based on cigarettes sold via Internet increases from \$633,868 in FY04 to \$1.1 million in FY07. However this amount most likely includes excise tax paid by some individuals who switched from buying cigarettes in retail stores to buying cigarettes via Internet.

DRAFT PROJECTIONS	Cigarettes	Fees	2005	2006	2007
# Sellers in Group – Cigs.	one to 30,000 30,001 and more		3 105	4 108	5 109
# Tobacco Sellers			100	100	100
Fees Collected –Cigs.	one to 30,000 30,001 and more	@\$500 @\$1,000	\$1,500 \$105,000	2,000 108,000	2,500 109,000
Fees Collected – Tobacco		@500	\$50,000	50,000	50,000
Total Fees Collected			\$156,500	\$160,000	\$161,500
Excise Tax (@0.77/pack)			\$633,868	\$852,734	\$1,105,036

The following are the estimated administrative costs for enforcing a direct marketing bill:

Cost Estimate						
Permanent Salaries			One time	Annual		
	Quantity	Unit Cost		Salary	Fringe rate	Total w/ Fringe
Tax Rep 2	0.5	15.48		\$16,099.20	1.4182	\$22,831.89
Excise Tax Agent	1	23.543		\$48,969.44	1.4992	\$73,414.98
	Total Permanent Salaries					\$96,246.87
Supporting Expenses						
	Quantity	Unit Cost	One time	Annual		
Agent Equipment	1	\$10,000.00	\$10,000.00			
Agent computers	1	\$3,400.00	\$3,400.00			
Agent Training	1	\$1,000.00	\$1,000.00			\$1,000.00

Travel						\$5,000.00
Forms, letters & follow-up						\$1,300.00
Rent	2	\$2,800.00				\$5,600.00
Telephone	2	\$400.00				\$800.00
Office Supplies	2	\$300.00				\$600.00
Other Equipment & Supplies	2	\$500.00				\$1,000.00
Evidence Gathering						\$9,000.00
			\$14,400.00			\$24,300.00
		TOTAL COSTS ALL LINES:	\$14,400.00			\$120,546.87

Detail of the additional workload is shown on Attachment 1. Costs shown above have been updated for current rates.

DRAFTING INSTRUCTIONS

See attached commentary for drafting instructions.

EFFECTIVE DATE AND/OR INITIAL APPLICABILITY

To be effective the first day of the first month after publication.

INTERESTED/AFFECTED PARTIES

Proponents

Cigarette Manufacturers, Distributors Association, Grocers Association, and the Petroleum Marketers Association.

Opponents

None are known at this time.

In the past the industry had two issues with this legislation:

1. The permit fee structure for cigarettes was seen as excessive. The permit fee structure was set up as a graduated permit fee depending on the number of cigarettes sold. It went from \$1,000 for less than 30,000 cigarettes sticks sold to \$5,000 for 30,000 to 600,000 cigarettes sticks sold to \$10,000 for 601,000 or more sticks sold. The permit fee structure now has been reduced to \$500 for the first 30,000 cigarettes stick sold and then to \$1,000 for more than 30,000 cigarettes sticks sold. The new fee structure should not be a problem this time.
2. The Grocers Association was against some of the enforcement statutes that were being added or updated with this legislation. They thought that we were going to target their members for technical violations instead of updating the enforcement statutes for this new permit type. Also, we were trying to update the enforcement statutes to better help curb some of the increased criminal activity that is currently going on in the cigarette and tobacco industry today.

PREPARED BY

Christopher Roy, Field Auditor
Audit Bureau – Excise Tax Section
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e:/proposals/Leg Proposals/2005-07 Bud Proposals/ISE Direct Marketing of CigarettesSept9

Attachment -- Drafting Instructions

Amend and create the Wisconsin Statutes to provide the following:

1. Consumer means any person to whom a seller advertises, promotes the sale of, offers to sell, or sells cigarettes and or tobacco products for the person's personal use or any person who has title to or possession of cigarettes and or tobacco products for any purpose other than sale or resale.
2. Direct Marketing means publishing or making accessible an offer for the sale of cigarettes and or tobacco products to consumers in this state when the consumer is not physically present at the time of sale on a premise that sells cigarettes and or tobacco products.
3. A Direct Marketer who sells cigarettes and or tobacco products to Wisconsin consumers shall first acquire the appropriate permit from the Wisconsin Department of Revenue. The permit will expire on December 31 of each year. The Direct Marketer of cigarettes will be placed under the same requirements as current cigarette distributors. The requirements are:
 - a. Cigarette distributors and direct marketers must purchase the unstamped cigarettes directly from the manufacturer or the first importer into the United States, and stamp the cigarettes with a Wisconsin cigarette tax stamp.
 - b. Or purchase stamped cigarettes from a Wisconsin permitted cigarette distributor.
 - c. Also, make sure that the cigarette brands that are to be sold have been approved by the Wisconsin Department of Revenue and are listed on the Wisconsin Department of Justice's Directory of Certified Tobacco Manufacturers and Brands.
4. The penalty for a Direct Marketer selling cigarettes to consumers in this state by direct marketing without a permit is \$5,000 per month of sales or \$50 for every 200 cigarettes sold into this state per month of sales, whichever is greater.
5. The penalty for a Direct Marketer for selling tobacco products to consumers in this state by direct marketing without a permit is \$5,000 or an amount equal to 50% of the tobacco products tax due, whichever is greater.
6. The Direct Marketer will also be required to pay the Wisconsin sales/use tax on the cigarettes and tobacco products sold to consumers in this state.
7. Prior to being able to sell the cigarettes and tobacco products to consumers in this state, the Direct Marketer must have a mechanism in place to verify the age of the consumer. The mechanisms are
 - a. A method, approved by the Department of Revenue, to verify the age of the consumer.
 - b. The Direct Marketer receives from the consumer a copy or facsimile of a government-issued identification and the name specified on the identification matches the name of the consumer.
8. A Direct Marketer may not sell more than 10 cartons of cigarettes to a consumer in a single sale. A Direct Marketer also may not sell more than 20 cartons of cigarettes to a consumer in a calendar month. Also, a consumer may not purchase more than 10 cartons of cigarettes from a Direct Marketer per sale. A consumer may not purchase more than 20 cartons of cigarettes from a Direct Marketer in a calendar month.
9. The penalty for a direct marketer who sells cigarettes to a consumer in this state of more than 10 cartons in a single instance or more than 20 cartons in a

calendar month by direct marketing is \$1,000 or \$50 for every 200 cigarettes sold into this state, whichever is greater.

10. The penalty for a consumer who purchases cigarettes from a Direct Marketer of more than 10 cartons in a single instance or more than 20 cartons in a calendar month by direct marketing is \$1,000 or \$25 for every 200 cigarettes sold into this state, whichever is greater.

1/12 or 1/13

JK: kjf

DOA:.....Koskinen - Direct marketing of cigarettes and tobacco products

FOR 2005-07 BUDGET -- NOT READY FOR INTRODUCTION

PWF

m 1-11-05

1 AN ACT ...; relating to: ???

Analysis by the Legislative Reference Bureau

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

2

(END)

1598/1

2001 BILL

Do Not Gen

1 AN ACT *to repeal* 139.32 (4), 139.34 (1) (b) and 139.34 (1) (c) 1. to 6.; *to amend*
2 134.65 (1), 134.65 (2) (a), 134.65 (5), 134.66 (2) (a), 134.66 (2) (am), 134.66 (2)
3 (d), 134.66 (2) (e), 139.30 (3), 139.30 (10), 139.32 (1), 139.32 (5), 139.32 (5m),
4 139.32 (6), 139.321 (1) (intro.), 139.321 (1) (a) 1., 139.33 (3), 139.34 (1) (a),
5 139.34 (1) (c) (intro.), 139.34 (4), 139.34 (6), 139.34 (8), 139.35 (1), 139.37 (1) (a),
6 139.38 (1), 139.38 (2), 139.395, 139.40 (2), 139.44 (3), 139.44 (4), 139.44 (7),
7 139.44 (8) (a), (b) and (c), 139.45, 139.75 (2), 139.75 (4) (a), 139.75 (4) (c), 139.75
8 (7), 139.75 (8), 139.79 (title), 139.79 (1), 139.79 (2), 139.81 (1) and 139.81 (2);
9 and *to create* 20.566 (1) (gc), 134.65 (1r), 134.66 (1) (am), 134.66 (3m), 139.30
10 (1m), 139.30 (2n), 139.30 (2p), 139.30 (8s), 139.34 (1) (c) 1m., 139.34 (1) (c) 2m.,
11 139.34 (1) (c) 3m., 139.34 (1) (cm), 139.345, 139.38 (1m), 139.44 (6m), 139.75
12 (3g), 139.75 (3r), 139.75 (4) (cm), 139.75 (5s), 139.76 (3), 139.78 (1m) and

BILL

1 ~~139.795 of the statutes, relating to: selling cigarettes and tobacco products by~~
 2 ~~direct marketing, making an appropriation, and providing penalties.~~ *No budget*

Analysis by the Legislative Reference Bureau

*TAXATION
OTHER TAXATION*
 * Under current law, generally, a person may not sell cigarettes in this state as a distributor, jobber, vending machine operator, or multiple retailer without having a permit from the department of revenue (DOR). Also, a person may not sell tobacco products in this state as a distributor or subjobber without having a permit from DOR. A "jobber" is any person who acquires cigarettes from manufacturers or distributors, stores the cigarettes, and sells the cigarettes to retailers for resale. A "subjobber" is any person, other than a manufacturer or distributor, who buys tobacco products from a distributor and who sells such products to any person other than the ultimate consumer.

This bill prohibits a direct marketer from selling cigarettes or tobacco products to consumers in this state without having the appropriate permit from DOR. Under the bill, "direct marketer" is defined as any person who solicits or sells cigarettes or tobacco products to consumers in this state by direct marketing. The bill defines "direct marketing" as publishing or making accessible an offer for the sale of cigarettes or tobacco products to consumers in this state, or selling cigarettes or tobacco products to consumers in this state, using any means by which the consumer is not physically present at the time of sale on a premise that sells cigarettes or tobacco products, including using newspapers, magazines, radio or television broadcasts, mailings, the telephone, or the Internet.

\$500
 A direct marketer who sells cigarettes to consumers in this state must apply to DOR for a permit and submit a fee with the permit application based on the number of cigarettes that the direct marketer sells annually to consumers in this state. If the direct marketer sells no more than 30,000 cigarettes annually to consumers in this state, the fee is ~~\$1,000~~. If the direct marketer sells more than 30,000 ~~but less than 600,000~~ cigarettes annually to consumers in this state, the fee is ~~\$800~~. *\$1,000*
~~If the direct marketer sells more than 600,000 cigarettes annually to consumers in this state, the fee is \$10,000.~~ A direct marketer who sells tobacco products to consumers in this state must apply to DOR for a permit and submit a \$500 fee with the application. Permits issued to direct marketers expire each year on December 31.

Under the bill, DOR will not issue a permit to a direct marketer unless the direct marketer certifies to DOR that all sales of cigarettes or tobacco products to consumers in this state will be credit card transactions; that the invoices for all shipments of cigarettes or tobacco products will bear the direct marketer's name, address, and permit number; and that the direct marketer will provide DOR any information that DOR considers necessary for cigarette and tobacco products tax and permit purposes. The direct marketer may not sell any cigarettes or tobacco products unless the sales tax, use tax, cigarette tax, or tobacco products tax, as appropriate, has been paid on the sale of the cigarettes or tobacco products. In addition, a direct marketer may not sell cigarettes or tobacco products in this state unless the direct

BILL

marketer has a mechanism, approved by DOR, for verifying the age of the purchaser, and the direct marketer receives from the purchaser, at the time of purchase, a copy or facsimile of a government issued identification and the name specified on the identification matches the name of the purchaser.

Under the bill, cigarettes and tobacco products may not be shipped to a person who is under 18 years of age and may not be shipped to a post-office box.

Under current law, a person may not sell cigarettes or tobacco products to consumers in this state unless the person obtains a license from each city, village, or town in which the person intends to sell cigarettes or tobacco products. The city, village, or town may charge not less than \$5 annually nor more than \$100 annually for such a license. Under the bill, no city, village, or town may issue such a license to any person who has an arrest or conviction record related to selling cigarettes or tobacco products or who has not submitted proof to the city, village, or town that he or she holds a valid retailer's permit issued by DOR.

For further information see the **state and local** fiscal estimate, which will be printed as an appendix to this bill.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

1 **SECTION 1.** 20.005 (3) (schedule) of the statutes: at the appropriate place, insert
2 the following amounts for the purposes indicated:

3
4 **20.566 Revenue, department of**

5 (1) COLLECTION OF TAXES

6 (gc) Administration of cigarette

7 direct marketing permits

PR

A

2005-06
~~2001-02~~ 120,547

2006-07
~~2002-03~~ 120,547

126,600

8 **SECTION 2.** 20.566 (1) (gc) of the statutes is created to read:

9 20.566 (1) (gc) *Administration of cigarette and tobacco product direct*
10 *marketing permits.* From the moneys received from permits issued and penalties
11 assessed under ss. 139.345, 139.40 (2), and 139.795, the amounts in the schedule for

BILL**SECTION 2**

1 enforcing and administering cigarette and tobacco product direct marketing permits
2 and penalties under ss. 139.345, 139.40 (2), and 139.795.

3 *note: bud*
SECTION 3. 134.65 (1) of the statutes is amended to read:

4 134.65 (1) No person, except a person who holds a valid permit under s. 139.345
5 or 139.795 and whose business premises is not physically located in this state, shall
6 in any manner, or upon any pretense, or by any device, directly or indirectly sell,
7 expose for sale, possess with intent to sell, exchange, barter, dispose of or give away
8 any cigarettes or tobacco products to any person not holding a license as herein
9 provided or a permit under ss. 139.30 to 139.41 or 139.79 without first obtaining a
10 license from the clerk of the city, village or town wherein such privilege is sought to
11 be exercised.

12 SECTION 4. 134.65 (1r) of the statutes is created to read:

13 134.65 (1r) (a) No license under sub. (1) may be issued to any person to whom
14 any of the following applies:

15 1. Subject to ss. 111.321, 111.322, and 111.335, the person has an arrest record
16 or a conviction record.

17 2. Subject to ss. 111.321, 111.322, and 111.335, the person has been convicted
18 of a felony, or as a repeat or habitual offender, unless pardoned.

19 3. The person has not submitted proof as provided under s. 77.61 (11).

20 (b) The requirements under par. (a) apply to all partners of a partnership, all
21 members of limited liability company, all agents of a limited liability company or
22 corporation, and all officers of a corporation. Subject to ss. 111.321, 111.322, and
23 111.335, if a business entity has been convicted of a crime, the entity may not be
24 issued a license under sub. (1) unless the entity has terminated its relationship with
25 the individuals whose actions directly contributed to the conviction.

BILL

1 **SECTION 5.** 134.65 (2) (a) of the statutes is amended to read:

2 134.65 (2) (a) ~~Except~~ [✓] Subject to sub. (1r). and ~~except~~ as provided in par. (b),
3 upon filing of a proper written application a license shall be issued on July 1 of each
4 year or when applied for and continue in force until the following June 30 unless
5 sooner revoked. The city, village or town may charge a fee for the license of not less
6 than \$5 nor more than \$100 per year which shall be paid to the city, village or town
7 treasurer before the license is issued.

8 ~~**SECTION 6.** 134.65 (5) of the statutes is amended to read:~~

9 ~~134.65 (5) Any person violating this section shall be fined not more than \$100~~
10 ~~\$1,000 nor less than \$25 \$500 for the first offense and shall be fined not more than~~
11 ~~\$200 \$5,000 nor less than \$25 \$1,000 or imprisoned not exceeding 180 days or both~~
12 ~~for the 2nd or subsequent offense. If upon such 2nd or subsequent violation, the~~
13 ~~person so violating this section was personally guilty of a failure to exercise due care~~
14 ~~to prevent violation thereof, the person shall be fined not more than \$300 nor less~~
15 ~~than \$25 or imprisoned not exceeding 60 days or both. Conviction on a 2nd or~~
16 ~~subsequent offense shall immediately terminate the license of the person convicted~~
17 ~~of being personally guilty of such failure to exercise due care and the person shall not~~
18 ~~be entitled to another license hereunder for a period of 5 years thereafter, nor shall~~
19 ~~the person in that period act as the servant or agent of a person licensed hereunder~~
20 ~~for the performance of the acts authorized by such license.~~

21 **SECTION 7.** 134.66 (1) (am) of the statutes is created to read:

22 134.66 (1) (am) "Direct marketer" has the meaning given in s. 139.30 (2n). [✓]

23 **SECTION 8.** 134.66 (2) (a) of the statutes is amended to read:

24 134.66 (2) (a) No retailer, direct marketer, manufacturer, distributor, jobber or
25 subjobber, no agent, employee or independent contractor of a retailer, direct

BILL**SECTION 8**

1 marketer, manufacturer, distributor, jobber or subjobber and no agent or employee
2 of an independent contractor may sell or provide for nominal or no consideration
3 cigarettes or tobacco products to any person under the age of 18, except as provided
4 in s. 254.92 (2) (a). A vending machine operator is not liable under this paragraph
5 for the purchase of cigarettes or tobacco products from his or her vending machine
6 by a person under the age of 18 if the vending machine operator was unaware of the
7 purchase.

8 **SECTION 9.** 134.66 (2) (am) of the statutes is amended to read:

9 134.66 (2) (am) No retailer, direct marketer, manufacturer, distributor, jobber,
10 subjobber, no agent, employee or independent contractor of a retailer, direct
11 marketer, manufacturer, distributor, jobber or subjobber and no agent or employee
12 of an independent contractor may provide for nominal or no consideration cigarettes
13 or tobacco products to any person except in a place where no person younger than 18
14 years of age is present or permitted to enter unless the person who is younger than
15 18 years of age is accompanied by his or her parent or guardian or by his or her spouse
16 who has attained the age of 18 years.

17 **SECTION 10.** 134.66 (2) (d) of the statutes is amended to read:

18 134.66 (2) (d) No manufacturer, direct marketer, distributor, jobber, subjobber
19 or retailer, or their employees or agents, may provide cigarettes or tobacco products
20 for nominal or no consideration to any person under the age of 18.

21 **SECTION 11.** 134.66 (2) (e) of the statutes is amended to read:

22 134.66 (2) (e) No retailer or direct marketer may sell cigarettes in a form other
23 than as a package or container on which a stamp is affixed under s. 139.32 (1).

24 **SECTION 12.** 134.66 (3m) of the statutes is created to read:

BILL

1 134.66 **(3m)** DEFENSE OF DIRECT MARKETER. Proof of any of the following facts
2 by a direct marketer who sells cigarettes or tobacco products to a person under the
3 age of 18 is a defense to any prosecution for a violation under sub. (2) (a):

4 (a) That the direct marketer used a mechanism, approved by the department
5 of revenue, for verifying the age of the purchaser.

6 (b) That the purchaser falsely represented that he or she had attained the age
7 of 18 and presented a copy or facsimile of a government issued identification.

8 (c) That the name and birthdate of the purchaser, as indicated by the purchaser,
9 matched the name and birthdate on the identification presented under par. (b).

10 (d) That the sale was made in good faith, in reasonable reliance on the
11 mechanism described in par. (a) and the representation and identification under
12 pars. (b) and (c), and in the belief that the purchaser had attained the age of 18.

13 **SECTION 13.** 139.30 (1m) of the statutes is created to read:

14 139.30 **(1m)** "Consumer" means any individual who receives cigarettes for his
15 or her personal use or consumption or any individual who has title to or possession
16 of cigarettes for any purpose other than for sale or resale.

17 **SECTION 14.** 139.30 (2n) of the statutes is created to read:

18 139.30 **(2n)** "Direct marketer" means any person who solicits or sells cigarettes
19 to consumers in this state by direct marketing.

20 **SECTION 15.** 139.30 (2p) of the statutes is created to read:

21 139.30 **(2p)** "Direct marketing" means publishing or making accessible an offer
22 for the sale of cigarettes to consumers in this state, or selling cigarettes to consumers
23 in this state, using any means by which the consumer is not physically present at the
24 time of sale on a premise that sells cigarettes.

25 **SECTION 16.** 139.30 (3) of the statutes is amended to read:

BILL**SECTION 16**

1 139.30 (3) "Distributor" means any person who acquires unstamped cigarettes
2 from the manufacturer thereof or from the first importer of record thereof, affixes
3 stamps to the packages or other containers, stores them and sells them to other
4 permittees or to retailers for resale ~~or~~ and who ~~acquires~~ may acquire stamped
5 cigarettes from another permittee distributor for such sales.

6 **SECTION 17.** 139.30 (8s) of the statutes is created to read:

7 139.30 (8s) "Person" means any individual, sole proprietorship, partnership,
8 limited liability company, corporation, or association, or any owner of a single-owner
9 entity that is disregarded as a separate entity under ch. 71.

10 **SECTION 18.** 139.30 (10) of the statutes is amended to read:

11 139.30 (10) "Retailer" means any person who sells, exposes for sale or possesses
12 with intent to sell to consumers any cigarettes by any means in which the consumer
13 is physically present at the time of sale on a premises that sells cigarettes.

14 **SECTION 19.** 139.32 (1) of the statutes is amended to read:

15 139.32 (1) The tax imposed by s. 139.31 (1) shall be paid. To evidence the
16 payment, the department shall provide stamps. A person who has paid the tax shall
17 affix stamps of the proper denomination to each package in which cigarettes are
18 packed, prior to the first sale within this state. First sale does not include a sale by
19 a manufacturer to a distributor or to a direct marketer or by a distributor to a
20 permittee who has obtained department approval as provided for in s. 139.321 (1) (a)
21 2. The tax shall be paid only once ^x on each package or container.

22 **SECTION 20.** 139.32 (4) of the statutes is repealed.

23 **SECTION 21.** 139.32 (5) of the statutes is amended to read:

*Sec. 21, 139.30 (4n) issued
139.30 (4n) "Government issued identification" includes a valid driver's license,
state identification card, passport, or military identification.*

BILL

1 139.32 (5) Manufacturers, direct marketers, and distributors having a permit
2 from the secretary shall receive a discount of ~~1.6%~~ of the tax paid on stamp
3 purchases. 1.6 percent

4 SECTION 22. 139.32 (5m) of the statutes is amended to read:

5 139.32 (5m) Distributors, direct marketers, and manufacturers shall pay to
6 the department the cost of printing and shipping those stamps.

7 SECTION 23. 139.32 (6) of the statutes is amended to read:

8 139.32 (6) Manufacturers, direct marketers, and distributors having a permit
9 from the secretary may purchase stamps on credit. The secretary may require
10 manufacturers, direct marketers, and distributors who purchase stamps on credit
11 to file under the conditions prescribed by the secretary by rule.

12 SECTION 24. 139.321 (1) (intro.) of the statutes is amended to read:

13 139.321 (1) (intro.) It is unlawful for any person to possess ~~in excess of 400~~
14 cigarettes unless the required stamps are properly affixed as provided in ss. 139.32
15 (1) and 139.33 (4).

16 SECTION 25. 139.321 (1) (a) 1. of the statutes is amended to read:

17 139.321 (1) (a) 1. Manufacturers, direct marketers, distributors or warehouse
18 operators possessing valid permits issued by the secretary.

19 SECTION 26. 139.33 (3) of the statutes is amended to read:

20 139.33 (3) No person other than a member of the armed forces, as specified in
21 this subsection, a licensed distributor, or a licensed direct marketer may import into
22 this state ~~more than 400~~ cigarettes on which the excise tax imposed by s. 139.31 has
23 not been paid and the container of which does not bear proper stamps. Within 15
24 days, any such person importing cigarettes shall file a declaration of such cigarettes
25 imported and shall remit therewith the tax on such cigarettes imposed by this

UPS:
this
should
already
be stricken

BILL

1 section. Members of the armed forces shall not be required to report or pay the tax
2 on cigarettes in their possession if such cigarettes are issued to them by the U.S.
3 government or any of its subdivisions or were purchased in any armed forces post
4 exchange or service store. If the use tax imposed by this section is not paid when due,
5 it shall become delinquent and the person liable for it shall pay, in addition, a penalty
6 of \$25 for each 200 cigarettes. Interest on the delinquent tax and penalty shall accrue
7 at the rate of ~~1.5%~~ per month or each fraction of a month from the date the tax became
8 due until paid. *1.5 percent*

9 **SECTION 27.** 139.34 (1) (a) of the statutes is amended to read:

10 139.34 (1) (a) No person may manufacture cigarettes in this state or sell
11 cigarettes in this state as a distributor, jobber, vending machine operator, direct
12 marketer, or multiple retailer and no person may operate a warehouse in this state
13 for the storage of cigarettes for another person without first filing an application for
14 and obtaining the proper permit to perform such operations from the department.

15 **SECTION 28.** 139.34 (1) (b) of the statutes is repealed.

16 **SECTION 29.** 139.34 (1) (c) (intro.) of the statutes is amended to read:

17 139.34 (1) (c) (intro.) Subject to ss. 111.321, 111.322 and 111.335, ~~no~~ No permit
18 under this section may be granted to any person to whom any of the following applies:

19 **SECTION 30.** 139.34 (1) (c) 1. to 6. of the statutes are repealed.

20 **SECTION 31.** 139.34 (1) (c) 1m. of the statutes is created to read:

21 139.34 (1) (c) 1m. Subject to ss. 111.321, 111.322, and 111.335, the person has
22 an arrest record or a conviction record.

23 **SECTION 32.** 139.34 (1) (c) 2m. of the statutes is created to read:

24 139.34 (1) (c) 2m. Subject to ss. 111.321, 111.322, and 111.335, the person has
25 been convicted of a felony, or as a repeat or habitual offender, unless pardoned.

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1 **SECTION 33.** 139.34 (1) (c) 3m. of the statutes is created to read:

2 139.34 (1) (c) 3m. The person has not submitted proof as provided under s.
3 77.61 (11).

4 **SECTION 34.** 139.34 (1) (cm) of the statutes is created to read:

5 139.34 (1) (cm) The requirements under par. (c) apply to all partners of a
6 partnership, all members of limited liability company, all agents of a limited liability
7 company or corporation, and all officers of a corporation. Subject to ss. 111.321,
8 111.322, and 111.335, if a business entity has been convicted of a crime, the entity
9 may not be issued a permit under this subsection unless the entity has terminated
10 its relationship with the individuals whose actions directly contributed to the
11 conviction.

12 **SECTION 35.** 139.34 (4) of the statutes is amended to read:

13 139.34 (4) A separate permit shall be required of and issued to each class of
14 permittee and the holder of any permit shall perform only the operations thereby
15 authorized. Such permit shall not be transferable from one person to another or from
16 one premises to another. A separate permit shall be required for each place where
17 cigarettes are stamped or where cigarettes are stored for sale at wholesale or
18 through vending machines or multiple retail outlets, or by direct marketing.

19 **SECTION 36.** 139.34 (6) of the statutes is amended to read:

20 139.34 (6) A vending machine operator or a multiple retailer may acquire
21 unstamped cigarettes ~~from the manufacturers thereof~~ and affix the stamps to
22 packages or other containers only if the vending machine operator or multiple
23 retailer also holds a permit as a distributor or direct marketer.

24 **SECTION 37.** 139.34 (8) of the statutes is amended to read:

BILL

SECTION 37

1 139.34 (8) The holder of a warehouse permit is entitled to store cigarettes on
2 the premises described in the permit. The warehouse permit shall not authorize the
3 holder to sell cigarettes. Unstamped cigarettes stored in a warehouse for a
4 manufacturer, direct marketer, or distributor may be delivered only to a person
5 holding a permit as a manufacturer, direct marketer, or distributor.

6 SECTION 38. 139.345 of the statutes is created to read:

7 **139.345 Direct marketing. (1)** (a) (intro.) No person may sell cigarettes to
8 consumers in this state as a direct marketer or solicit sales of cigarettes to consumers
9 in this state by direct marketing unless the person has obtained a permit from the
10 department to make such sales or solicitations. The person shall file an application
11 for a permit under this subsection with the department, in the manner prescribed
12 by the department, and shall submit the following fee with the application:

13 1. If the person sells no more than 30,000 cigarettes annually to consumers in
14 this state by direct marketing, ~~\$1,000~~ ^{\$500}

15 2. If the person sells more than 30,000 ~~but less than 600,001~~ cigarettes
16 annually to consumers in this state by direct marketing, ~~\$5,000~~ ^{\$1,000}

17 ~~3. If the person sells more than 600,000 cigarettes annually to consumers in~~
18 ~~this state by direct marketing, \$10,000.~~

19 (b) A permit issued under par. (a) expires on December 31 of each year.

20 (c) The department may not issue a permit to a person under par. (a) unless the
21 person certifies to the department that the person shall acquire stamped cigarettes
22 from a licensed wholesaler or distributor or unstamped cigarettes from the first
23 importer of record thereof, pay the tax imposed under this subchapter on all
24 unstamped cigarettes and affix stamps to the cigarette packages or containers as
25 provided under s. 139.32 (1), store such packages or containers, and sell only such

BILL

1 packages or containers to consumers in this state by direct marketing; or purchase
2 cigarettes from a distributor, to the packages or containers of which stamps have
3 been affixed as provided under s. 139.32 (1), and sell only such packages or
4 containers to consumers in this state by direct marketing.

5 (d) No person may be issued a permit under this subsection unless the person
6 certifies to the department, in the manner prescribed by the department, that all
7 cigarette sales to consumers in this state shall be credit card or personal check
8 transactions; that the invoices for all shipments of cigarette sales from the person
9 shall bear the person's name and address and permit ultimately issued under this
10 subsection; and that the person shall provide the department any information the
11 department considers necessary to administer this section.

12 (2) (a) No person may purchase tax stamps in excess of the number of cigarette
13 sales specified in his or her permit under sub. (1) (a) unless the person pays the
14 permit fee under sub. (1) (a) that is applicable to the excess amount.

15 (b) No person may sell cigarettes in excess of the number of cigarette sales
16 specified in his or her permit under sub. (1) (a) unless the person pays the permit fee
17 under sub. (1) (a) that is applicable to the excess sales. Any person who sells
18 cigarettes in excess of the number of cigarette sales specified in his or her permit
19 shall pay a penalty to the department of \$5,000 or an amount that is equal to \$50 for
20 every 200 cigarettes, or fraction of 200 cigarettes, whichever is greater.

21 (3) (a) No person may sell cigarettes to consumers in this state by direct
22 marketing unless the tax imposed under s. 139.31 (1) is paid on such cigarettes and
23 stamps are affixed to the cigarette packages or containers as provided under s.
24 139.32.

BILL

SECTION 38

1 (b) No person may sell cigarettes to consumers in this state by direct marketing
2 unless the tax imposed under s. 77.52 or 77.53 is paid on the sale of such cigarettes.

3 (4) No person may sell cigarettes to a consumer in this state by direct
4 marketing unless the person verifies the consumer's identity and that the consumer
5 is at least 18 years of age by any of the following methods:

6 (a) The person uses a database, approved by the department, that includes
7 information based on public records to verify the consumer's age and identity.

8 (b) The person receives from the consumer, at the time of purchase, a notarized
9 copy of a government issued identification, the name specified on the identification
10 matches the name of the consumer, and the birth date on the identification verifies
11 that the purchaser is at least 18 years of age. ~~In this paragraph, "government issued~~

12 ~~identification" includes a valid driver's license, state identification card, passport, or~~
13 ~~military identification.~~

14 (c) The person uses a mechanism, other than a mechanism under par. (a) or (b),
15 for verifying the age and identity of a consumer that is approved by the department.

16 (5) Any person who, without having a valid permit under sub. (1), sells or
17 solicits sales of cigarettes to consumers in this state by direct marketing shall pay
18 a penalty to the department of \$5,000 or an amount that is equal to \$50 for every 200
19 cigarettes, or fraction of 200 cigarettes, sold to consumers in this state by direct
20 marketing, whichever is greater.

21 (6) (a) No sale of cigarettes to a consumer in this state by direct marketing may
22 exceed 10 cartons for each invoice or 20 cartons in a 30-day period for each purchaser
23 or address.

24 (b) Any person who sells cigarettes that exceed the maximum amounts under
25 par. (a) shall pay a penalty to the department of \$5,000 or an amount that is equal

(c) ~~No person may sell cigarettes to consumers in this state unless the cigarette~~
~~brands are approved by the department and listed in the directory of~~
~~certified tobacco manufacturers and brands as provided under s. 895.12(2)(b).~~
Handwritten notes: "cigarettes" above "sell", "this" above "state", "brands" above "and", "as" above "provided".

by direct marketing

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1 to \$50 for every 200 cigarettes, or major fraction of 200 cigarettes, sold above the
2 maximum amounts, whichever is greater.

3 (c) Any person who purchases cigarettes that exceed the maximum amounts
4 under par. (a) shall apply for a permit under s. 139.34 and shall pay a penalty to the
5 department of \$25 for every 200 cigarettes, or fraction of 200 cigarettes, purchased
6 above the maximum amounts.

7 (7) No cigarettes may be shipped to a person who is under 18 years of age and
8 no cigarettes may be shipped to a post-office box.

9 (8) All revenue collected from permits and penalties under this section shall
10 be credited to the appropriation account under s. 20.566 (1) (gc) to enforce and
11 administer this section.

12 **SECTION 39.** 139.35 (1) of the statutes is amended to read:

13 139.35 (1) TRANSFERS. No person may give, sell or lend any stamps to another
14 and no person may accept, purchase or borrow any stamps from another. All sales
15 and transfers of stamps may be made only by the secretary to permit holding
16 manufacturers, direct marketers, and distributors.

17 **SECTION 40.** 139.37 (1) (a) of the statutes is amended to read:

18 139.37 (1) (a) No person shall sell cigarettes or take orders for cigarettes for
19 resale solicit cigarette sales in this state for any manufacturer or permittee without
20 first obtaining a unless the person has filed an application for and obtained a valid
21 certificate under s. 73.03 (50) and a salesperson's permit from the department of
22 revenue. No manufacturer or permittee shall authorize any person to sell cigarettes
23 or take orders for cigarettes solicit cigarette sales in this state without first having
24 such person secure unless the person has filed an application for and obtained a valid
25 certificate under s. 73.03 (50) and a salesperson's permit. No person shall authorize

BILL**SECTION 40**

1 another person to sell cigarettes or solicit cigarette sales in this state unless the
2 person has filed an application for and obtained a valid certificate under s. 73.03 (50)
3 and a valid permit under s. 139.34. The department shall issue the required number
4 of permits to ~~manufacturers and~~ permittees who hold a valid certificate issued under
5 s. 73.03 (50). Each application for a permit shall disclose the name and address of
6 the employer and such permit shall remain effective only while the salesperson
7 represents such named employer. If such salesperson is thereafter employed by
8 another ~~manufacturer or permittee person~~, the salesperson shall obtain a new
9 salesperson's permit. Each ~~manufacturer and~~ permittee shall notify the department
10 within 10 days after the resignation or dismissal of any such salesperson holding a
11 permit.

12 **SECTION 41.** 139.38 (1) of the statutes is amended to read:

13 139.38 (1) Every manufacturer located out of the state shall keep records of all
14 sales of cigarettes shipped into this state. Every manufacturer located in the state
15 shall keep records of production, sales and withdrawals of cigarettes. Every
16 distributor and direct marketer shall keep records of purchases and sales of
17 cigarettes. Every manufacturer, direct marketer, and distributor holding a permit
18 from the secretary with the right to purchase and apply stamps shall also keep
19 records of purchases and disposition of stamps. Every jobber, multiple retailer, and
20 vending machine operator shall keep records of all purchases and disposition of
21 cigarettes. Every warehouse operator shall keep records of receipts and withdrawals
22 of cigarettes. All such records shall be accurate and complete and be kept in a
23 manner prescribed by the secretary. These records shall be preserved on the
24 premises described in the permit or license in such a manner as to ensure

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1 permanency and accessibility for inspection at reasonable hours by authorized
2 personnel of the department.

3 **SECTION 42.** 139.38 (1m) of the statutes is created to read:

4 139.38 **(1m)** Records of purchases and sales of cigarettes under sub. (1) that
5 are kept by direct marketers shall indicate, for each shipment of cigarettes into this
6 state in the month preceding the report under sub. (2), the invoice date and number;
7 the quantity of cigarettes shipped; the brand name of the cigarettes shipped; the
8 manufacturer of the cigarettes shipped and the manufacturer's origin; the
9 purchaser's name, address, and birth date; the name of the person to whom the
10 cigarettes were shipped; the address to which the cigarettes were shipped; and any
11 other information the department requires.

12 **SECTION 43.** 139.38 (2) of the statutes is amended to read:

13 139.38 **(2)** (a) Except as provided in par. (b), every permittee manufacturer,
14 distributor, jobber, and direct marketer shall render a true and correct invoice of
15 every sale of cigarettes at wholesale and every permittee shall on or before the 15th
16 day of each calendar month file a verified report of all cigarettes purchased, sold,
17 received, warehoused or withdrawn during the preceding calendar month.

18 (b) The department may allow any jobber, multiple retailer, direct marketer,
19 or vending machine operator permittee who does not sell cigarettes, except for those
20 on which the tax under this chapter is paid, to file a quarterly report. The quarterly
21 report shall be filed on or before the 15th day of the next month following the close
22 of each calendar quarter. The report shall specify the number of cigarettes purchased
23 and sold during the preceding calendar quarter.

24 **SECTION 44.** 139.395 of the statutes is amended to read:

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SECTION 44

1 **139.395 Theft of tax moneys.** All cigarette tax moneys received by a
2 distributor, direct marketer, or manufacturer for the sale of cigarettes on which the
3 tax under this subchapter has become due and has not been paid are trust funds in
4 the hands of the distributor, direct marketer, or manufacturer and are the property
5 of this state. Any distributor, direct marketer, or manufacturer who fraudulently
6 withholds, appropriates or otherwise uses cigarette tax moneys that are the property
7 of this state is guilty of theft under s. 943.20 (1), whether or not the distributor, direct
8 marketer, or manufacturer has or claims to have an interest in those moneys.

9 **SECTION 45.** 139.40 (2) of the statutes is amended to read:

10 139.40 (2) If cigarettes which do not bear the proper tax stamps or on which
11 the tax has not been paid Cigarettes that are so seized they as provided under sub. ✓
12 (1) may be given to law enforcement officers to use in criminal investigations or sold
13 to qualified buyers by the secretary, without notice. If the cigarettes are sold, after
14 deducting the costs of the sale and the keeping of storing the property, the proceeds
15 of the sale shall be paid into the state treasury, except that proceeds from the sale
16 of cigarettes seized from a direct marketer and obtained through the administration ✓
17 of this subsection shall be credited to the appropriation account under s. 20.566 (1) ✓
18 (gc). If the secretary finds that such cigarettes may deteriorate or become unfit for
19 use in criminal investigations or for sale or that those uses would otherwise be
20 impractical, the secretary may order them destroyed or give them to a charitable or
21 penal institution for free distribution to patients or inmates.

22 **SECTION 46.** 139.44 (3) of the statutes is amended to read:

23 139.44 (3) Any permittee who fails to keep the records required by ss. 139.30
24 to 139.42 or 139.77 to 139.82 shall be fined not less than \$100 \$500 nor more than
25 \$500 \$1,000 for the first offense and shall be fined not less than \$1,000 nor more than

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1 ~~\$5,000~~ or imprisoned not more than ~~6 months~~ 180 days or both for the 2nd or
2 subsequent offense.

3 **SECTION 47.** 139.44 (4) of the statutes is amended to read:

4 139.44 (4) Any person who refuses to permit the examination or inspection
5 authorized in s. 139.39 (2) or 139.83 may be fined not ~~more~~ less than \$500 nor more
6 than \$1,000 or imprisoned not more than ~~90~~ 180 days or both. Such refusal shall be
7 cause for immediate suspension or revocation of permit by the secretary.

8 **SECTION 48.** 139.44 (6m) of the statutes is created to read:

9 139.44 (6m) Any person who manufactures or sells cigarettes in this state
10 without holding the proper permit issued under this subchapter shall be fined not
11 less than \$1,000 nor more than \$10,000 or imprisoned not less than 6 months nor
12 more than 2 years or both.

13 **SECTION 49.** 139.44 (7) of the statutes is amended to read:

14 139.44 (7) In addition to the penalties imposed for violation of ss. 139.30 to
15 139.41 or 139.75 to 139.83 or any of the rules of the department, the permit of any
16 person convicted of a 2nd or subsequent offense shall be automatically revoked and,
17 he or she shall not be granted another permit for a period of ~~2~~ 5 years following such
18 revocation, and, for the 5-year period following revocation, he or she shall not act as
19 the employee or agent of a permittee under this subchapter to perform acts
20 authorized by any permit issued to the permittee under this subchapter.

21 **SECTION 50.** 139.44 (8) (a), (b) and (c) of the statutes are amended to read:

22 139.44 (8) (a) If the number of cigarettes does not exceed 6,000, a fine of not
23 more than \$200 \$1,000 or imprisonment for not more than ~~6 months~~ one year or both.

BILL**SECTION 50**

1 (b) If the number of cigarettes exceeds 6,000 but does not exceed 36,000, a fine
2 of not more than \$1,000 \$5,000 or imprisonment for not more than ~~one year in the~~
3 ~~county jail~~ 2 years or both.

4 (c) If the number of cigarettes exceeds 36,000, a fine of not ~~more~~ less than
5 \$10,000 ~~nor more than \$50,000~~ or imprisonment for not more than ~~3~~ 5 years or both.

6 ~~SECTION 51.~~ 139.45 of the statutes is amended to read:

7 **139.45 Prosecutions by attorney general.** Upon request by the secretary
8 of revenue, the attorney general may represent this state or assist a district attorney
9 in prosecuting any case arising under this subchapter or under ss. 134.65 and 134.66.

10 **SECTION 52.** 139.75 (2) of the statutes is amended to read:

11 139.75 (2) "Consumer" means any individual who receives tobacco products for
12 his or her personal use or consumption or any person individual who has title to or
13 possession of tobacco products ~~in storage for use or other consumption in this state~~
14 any purpose other than for sale or resale.

15 **SECTION 53.** 139.75 (3g) of the statutes is created to read:

16 139.75 (3g) "Direct marketer" means any person who solicits or sells tobacco
17 products to consumers in this state by direct marketing.

18 **SECTION 54.** 139.75 (3r) of the statutes is created to read:

19 139.75 (3r) "Direct marketing" means publishing or making accessible an offer
20 for the sale of tobacco products to consumers in this state, or selling tobacco products
21 to consumers in this state, using any means by which the consumer is not physically
22 present at the time of sale on a premise that sells tobacco products.

23 **SECTION 55.** 139.75 (4) (a) of the statutes is amended to read:

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1 139.75 (4) (a) Any person in this state engaged in the business of selling tobacco
2 products ~~in this state~~ who brings, or causes to be brought, into this state from outside
3 the state any tobacco products for sale;

4 **SECTION 56.** 139.75 (4) (c) of the statutes is amended to read:

5 139.75 (4) (c) Any person outside this state engaged in the business of selling
6 tobacco products ~~outside this state~~ who ships or transports tobacco products to
7 retailers in this state to be sold by those retailers.

8 **SECTION 57.** 139.75 (4) (cm) of the statutes is created to read:

9 139.75 (4) (cm) Any person outside this state engaged in the business of selling
10 tobacco products who ships or transports tobacco products to consumers in this state.

11 **SECTION 58.** 139.75 (5s) of the statutes is created to read:

12 139.75 (5s) "Person" means any individual, sole proprietorship, partnership,
13 limited liability company, corporation, or association, or any owner of a single-owner
14 entity that is disregarded as a separate entity under ch. 71.

15 **SECTION 59.** 139.75 (7) of the statutes is amended to read:

16 139.75 (7) "Retail outlet" means each place of business from which tobacco
17 products are sold to consumers by a retailer.

18 **SECTION 60.** 139.75 (8) of the statutes is amended to read:

19 139.75 (8) "Retailer" means any person engaged ~~in the business of selling~~
20 tobacco products who sells, exposes for sale, or possesses with intent to sell, to
21 ultimate consumers any tobacco products by any means in which the consumer is
22 physically present at the time of sale on a premises that sells tobacco products.

23 **SECTION 61.** 139.76 (3) of the statutes is created to read:

Sec #. w/ 139.75 (4n)
139.75 (4n) "Government issued identification" includes a valid
driver's license, state identification card, ^{passport} or ^{military} identification.

BILL**SECTION 61**

1 139.76 (3) Except as provided in sub. (2), no person may possess tobacco
2 products in this state unless the tax imposed under sub. (1) is paid on such tobacco
3 products.

4 **SECTION 62.** 139.78 (1m) of the statutes is created to read:

5 139.78 (1m) Except as provided in s. 139.76 (2), no person other than a
6 distributor with a valid permit under s. 139.79 may import into this state tobacco
7 products for which the tax imposed under s. 139.76 (1) has not been paid.

8 **SECTION 63.** 139.79 (title) of the statutes is amended to read:

9 **139.79 (title) Permits; distributor; direct marketer; subjobber.**

10 **SECTION 64.** 139.79 (1) of the statutes is amended to read:

11 139.79 (1) No person may engage in the business of a distributor, direct
12 marketer, or subjobber of tobacco products at any place of business unless that
13 person has filed an application for and obtained a permit from the department to
14 engage in that business at such place.

15 **SECTION 65.** 139.79 (2) of the statutes is amended to read:

16 139.79 (2) Section 139.34 (1) ~~(b)~~ (c) to (f), (4) and (9) applies to the permits under
17 this section.

18 **SECTION 66.** 139.795 of the statutes is created to read:

19 **139.795 Direct marketing. (1)** (a) (intro.) No person may sell tobacco
20 products by direct marketing to consumers in this state as a direct marketer or solicit
21 sales of tobacco products to consumers in this state by direct marketing unless the
22 person has obtained a permit from the department to make such sales or
23 solicitations. The person shall file an application for a permit under this subsection
24 with the department, in the manner prescribed by the department, and shall submit
25 a \$500 fee with the application.

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1 (b) No person may be issued a permit under this subsection unless the person
2 holds a valid distributor's permit under s. 139.79. Section 139.34 (1) (c) to (f), (7), and
3 (9), as it applies to permits issued under s. 139.34, applies to permits issued under
4 this subsection.

5 (c) A permit issued under this subsection expires on December 31 of each year.

6 (d) No person may be issued a permit under this subsection unless the person
7 certifies to the department, in the manner prescribed by the department, that all
8 tobacco product sales to consumers in this state shall be credit card or personal check
9 transactions; that the invoice for all shipments of tobacco product sales from the
10 person shall bear the person's name and address and permit ultimately issued under
11 this subsection; and that the person shall provide the department any information
12 the department considers necessary to administer this section.

13 (2) No person may sell tobacco products to consumers in this state by direct
14 marketing unless the tax imposed under s. 139.76, and under s. 77.52 or 77.53, has
15 been paid with regard to such products.

16 (3) No person may sell tobacco products to a consumer in this state by direct
17 marketing unless the person verifies the consumer's identity and that the consumer
18 is at least 18 years of age by any of the following methods:

19 (a) The person uses a database, approved by the department, that includes
20 information based on public records to verify the consumer's age and identity.

21 (b) The person receives from the consumer, at the time of purchase, a notarized
22 copy of a government issued identification, the name specified on the identification
23 matches the name of the consumer, and the birth date on the identification verifies
24 that the purchaser is at least 18 years of age. ~~In this paragraph, "government issued"~~

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SECTION 66

1 identification includes a valid driver's license, state identification card, passport, or
2 military identification. ✓ ✓

3 (c) The person uses a mechanism, other than a mechanism under par. (a) or (b),
4 for verifying the age and identity of a consumer that is approved by the department. ✓

5 (4) Any person who, without having a valid permit under sub. (1), sells or
6 solicits sales of tobacco products to consumers in this state by direct marketing shall
7 pay a penalty to the department of \$5,000 or an amount that is equal to ~~50%~~ 50 percent of the
8 tax due on the tobacco products the person sold, without having a valid permit under
9 sub. (1), to consumers in this state by direct marketing, whichever is greater.

10 (5) No tobacco products may be shipped or delivered to a person who is under
11 18 years of age and no tobacco products may be shipped to a post-office box.

12 (6) All revenue collected from permits and penalties under this section shall
13 be credited to the appropriation account under s. 20.566 (1) (gc) to enforce and
14 administer this section. ✓

15 SECTION 67. 139.81 (1) of the statutes is amended to read:

16 139.81 (1) No person may sell ~~or take orders for~~ tobacco products for resale or
17 solicit sales of tobacco products in this state ~~for any manufacturer or permittee~~
18 unless the person has filed an application for and obtained a valid certificate under
19 s. 73.03 (50) and a salesperson's permit from the department. No ~~manufacturer or~~
20 permittee shall authorize any person to sell ~~or take orders for~~ tobacco products or
21 solicit sales of tobacco products in this state unless the person has filed an application
22 for and obtained a valid certificate under s. 73.03 (50) and a salesperson's permit.
23 No person shall authorize another person to sell tobacco products or solicit sales of
24 tobacco products in this state unless the person has filed an application for and
25 obtained a valid certificate under s. 73.03 (50) and a valid permit under s. 139.79. ✓ ✓

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1 Each application for a permit shall disclose the name and address of the employer
2 and shall remain effective only while the salesperson represents the named
3 employer. If the salesperson is thereafter employed by another ~~manufacturer or~~
4 permittee person the salesperson shall obtain a new salesperson's permit. Each
5 ~~manufacturer and~~ permittee shall notify the department within 10 days after the
6 resignation or dismissal of any salesperson holding a permit.

7 **SECTION 68.** 139.81 (2) of the statutes is amended to read:

8 139.81 (2) Section 139.34 (1) (b) [✓](c) to (e) applies to the permits under this
9 section.

10 **SECTION 69. Nonstatutory provisions.** ^{9/4/} ^{revenue}

11 (1) DIRECT MARKETING OF CIGARETTES AND TOBACCO PRODUCTS. The authorized
12 FTE positions for the department of revenue are increased by 1.5 PR positions on
13 July 1, ~~2002~~ ²⁰⁰⁵, to be funded from the appropriation under section 20.566 (1) (gc) of the
14 statutes, as created by this act, for the purpose of enforcing and administering
15 cigarette and tobacco product direct marketing permits and penalties.

16 (END)

Change
Companion
10